



Quinault Indian Nation

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June 9, 2025

City of Westport
Attention: Tom Cappa, SEPA Responsible Official
PO Box 505
Westport, Washington 98595
By Email: wgl.wlsp.deis.comments@gmail.com

RE: Draft Environmental Impact Statement for Westport Golf Links (25-COW-EIS-01)

Dear Mr. Cappa:

The Quinault Indian Nation ("QIN") has reviewed the draft environmental impact statement ("DEIS") for the proposed Westport Golf Links development ("Project") from the applicant, Westport Golf, Inc., that includes development within the Westport Light State Park ("WLSP"). QIN is deeply concerned about the impacts of the Project, particularly as it relates to the destruction of critical habitat for fish and aquatic species, and its impacts to QIN's treaty rights. QIN is also concerned by the City's lack of consultation with QIN during the early planning phase, and to allow us additional time to provide comments, particularly on the mitigation component. Please accept the following comments.

The Quinault Indian Nation is a federally recognized sovereign Indian Tribe and signatory to the Treaty of Olympia (1856) by which it reserved, among other things, the right of "taking fish, at all usual and accustomed fishing grounds and stations" and the privilege of hunting and gathering on open and unclaimed lands, among other rights, in exchange for ceding lands it historically roamed freely. In a landmark court case known as the "Boldt decision," a federal court confirmed Quinault's Treaty fishing rights and established the Nation and other plaintiff tribes as co-managers of off-Reservation fisheries resources entitled to half of the harvestable number of fish returning to Washington waters. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wn. 1974), aff'd 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976)

The "Boldt Decision" recognized the tribes' rights to harvest fish but also implied that those rights depend on the continued existence of healthy fish populations; fishing rights are meaningless without fish and the habitat they depend on. The Nation has reserved federally guaranteed fishing rights to take fish at its usual and Accustomed (U&As) fishing grounds which include Grays Harbor and its watershed. *United States v. Washington*, 384 F. Supp. 312, 374-375, 459 F.Supp. 1020, 1097 (W.D.

Wash. 1974). Grays Harbor and the tributary streams, rivers and wetlands, provide the freshwater and marine habitat that supports Chinook, chum, and coho salmon and steelhead of critical importance to the Quinault Nation's treaty-protected terminal river fisheries within Grays Harbor.

Treaties are the supreme law of the land. *Breard v. Greene*, 523 U.S. 371, 375, 118 S. Ct. 1352, 1354, 140 L. Ed. 2d 529 (1998). They impose the "highest responsibility" on the government and create a special fiduciary duty and trust responsibility upon all agencies of the United States and states to protect Treaty rights, including fishing rights. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). These rights cannot be abrogated or diminished except by explicit Congressional authorization. *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 346, 354 (1941).

1. THE PROPOSED PROJECT THREATENS FEDERALLY PROTECTED FISHERIES TREATY RIGHTS

The DEIS contains insufficient information relating to the protection of fish and shellfish. Because fish and shellfish are protected treaty reserved resources, any potential impacts must be clearly identified, thoroughly analyzed, and fully mitigated. The following outline the issues with the analysis to fish and shellfish:

- A. While fish species were included in the DEIS, the analysis was rushed and incomplete. It does not include an assessment of the shoreline habitats that are included in the adjacent Seashore Conservation Area, Half Moon Bay, and Gray Harbor's fragile estuaries. Further, the DEIS fails to mention QIN's own biological observations of juvenile Coho near the Project site (depicted in Figure 3.2.8-1). QIN has communicated this information to the City numerous times.
- B. The DEIS fails to delineate the fish associated wetlands and their respective buffers that are required for the critical areas in the impact assessment. For example, the DEIS claims the proposed guest cottage area is not expected to impact onsite fish habitat (page 272) but fails to provide supporting data. This omission is a significant oversight and renders the fish impact assessment incomplete.
- C. Stormwater runoff impacts are inaccurate and fail to assess the impacts on coho habitat. The DEIS states "no stormwater would be directed to this drainage course feature under either action alternative" (page 272). This is an inaccurate statement as the Threshold Discharge Area 1 is located at the drainage course that provides juvenile coho rearing habitat. See Fig. 3.2.19-5, TDA 1.
- D. Crabbing for Dungeness Crab takes place south of the jetty extending down to the lighthouse along the proposed Project site. The DEIS has failed to assess how the proposal could affect crab habitat and populations. Nitrogen and phosphorus runoff, particularly fertilizer runoff, can negatively impact Dungeness crab populations by fueling algal blooms that deplete oxygen in the water. Dissolved oxygen can cause Dungeness Crab to become inactive, cease feeding, negatively impact growth of juvenile crabs, and lead to declines in fish populations. Because of their importance for both commercial and subsistence purposes, the impacts to Dungeness crab populations must be analyzed.

- E. Razor clam beds are adjacent to the Project Site, and yet the DEIS failed to assess how stormwater from the proposed outfall will lead to contamination of razor clams. Razor clams are indicator species and are susceptible to runoff. Stormwater that contains pesticides and other chemicals has the potential to cause impacts to the clams and impacts to public health. Razor clams are an important treaty resource for QIN tribal members. An analysis of impacts to this species is required.
- F. Excess fertilizers that are introduced through stormwater runoff without treatment will cause eutrophication to fragile ecosystems in the Pacific Ocean, Half Moon Bay, and other fragile estuary systems within Grays Harbor. Excess nutrient runoff promotes harmful algal blooms, which can lead to hypoxic and anoxic conditions. These low oxygen conditions can kill fish and eelgrass, degrade critical fish habitat for Chinook, chum, and coho, and contribute to dead zones. Additionally, harmful algal blooms will result in the closure of shellfish beds for extended periods of time, impacting commercial and subsistence harvests. The DEIS needs to address these issues.

2. THE CITY HAS FAILED TO PROPERLY ACCOUNT FOR EROSION AND CLIMATE CHANGE

In 2015, the Washington State Parks and Recreation Commission adopted the Washington State Parks Adaptation Plan which requires agencies to evaluate agency actions in the context of climate change. The first cross-cutting concerns states: “Siting and design of park infrastructure is likely to be affected by climate change, especially at coastal parks threatened by sea level rise and shoreline erosion, and river parks affected by heavier rain events and flooding.” The City has a legal obligation to view this Project and account for foreseeable impacts that will be exacerbated by climate change, especially rising sea levels and shoreline erosion. The Project removes critical areas, causing harm to fragile ecosystems, and has the potential to cause extensive shoreline erosion. It is foreseeable that a major climate change event such as a tsunami and/or an earthquake will happen. The runoff from pesticide and fertilizer-soaked greens coupled with the impacts from climate change such as flooding and storm events could be catastrophic. The DEIS falls short of meeting the direction of the Adaptation Plan and fails to thoroughly evaluate the impacts of climate change using the best available science.

- A. Sea levels will continue to rise, and storms will increase in severity. The shoreline around the Project site is already in a precarious condition. The proposed filling of interdunal wetlands and up to 146 acres of vegetation removal will likely exacerbate soil instability and erosion. Development within interdunal areas that protect against flooding and sea level rise is counterproductive.
- B. The Project includes two coastal discipline reports. The analysis of coastal erosion conducted by Herrera Environmental Consultants only looked at a 25-year timeframe and failed to account for projected sea level rises. The report from Aecom looked at a 100-year timeframe and properly included climate change. The DEIS assessment largely relied upon the report with the shorter time period. The City’s review of the Project should not include cherry-picking which data will paint a light more favorable to this Project, particularly since it fails to include long-term required planning around climate change. This narrow scope is inadequate,

especially in light of the Project's proposed 80-year lifespan. The City must look at the longer timeframe to include probable climate-change issues.

- C. The DEIS states that if coastal erosion occurs, the golf course operator will be responsible for making modifications. This implies that erosion is a known and foreseeable issue and that stabilization measures may be needed. This directly conflicts with the City of Westport's Shoreline Management Plan (6.07.01 Policies), which prohibits new development that would require shoreline stabilization *likely to harm adjacent shoreline areas*. Rather than approve an action that allows a threat by a natural land change process, the City should follow the Washington State Parks Critical Areas Policy, which states that the Agency shall "retreat from that threat rather than construction of protective measures." Washington State Parks Critical Areas Policy 73.03-01.
- D. The Army Corps of Engineers has stated that the Project will increase the value of public park assets, thus, increasing the likelihood of future federal beach nourishment funding. The inclusion of this statement in the DEIS (page 138) is troubling and misdirected and indicates that the Applicant and the City are complacent in a project that will contribute to shoreline loss, so long as this will incentivize the beach nourishment after the damage has been done.

3. WATER RESOURCES WILL BE NEGATIVELY AFFECTED BY THE PROJECT

There are concerns that water quality and fish habitat will be impacted during significant winter storm events, as referenced in Section 3.2 of the DEIS (page 141). There are three threshold drainage areas ("TDA"). As outlined above, the QIN reiterates its concern for impacts to coho bearing streams because of stormwater runoff and significant storm events.

- A. The DEIS states that "the TDA 1 wetland complex provides onsite storage of stormwater runoff that gradually draws down due to infiltration and evaporation during significant winter storm events. Wetland A fills up and overflow drains into an offsite roadside ditch system along N. Forrest Street." This known impact to water resources must be addressed.
- B. The DEIS states that there would be "negligible impacts to surface water movement on the site as a result of implementing Alternative 1 or Alternative 2." However, the Applicant fails to provide hydraulic modeling to substantiate this claim. It remains unclear how the proposed filling of the wetlands has been considered within the hydrological framework. Additional analysis and detailing modeling needs to adequately evaluate and support this conclusion.
- C. The DEIS states that pesticides will be selected based on their safety, efficacy, economic impact, toxicology, and environmental compatibility (page 147), and yet it fails to disclose the types, quantities, and timing of pesticide applications. This fatal flaw does not allow for an informed analysis of the impact to aquatic resources and important treaty protected resources such as salmonids, razor clams, and Dungeness crabs. The Applicant needs to provide a detailed accounting for pesticides and fertilizers that will be used throughout the year, including their frequency and dosage. Absent this information, the impact to fish and aquatic species and water resources cannot be determined.

- D. The Applicant proposes to have a site-specific Water Quality Monitoring Plan prepared to ensure ongoing protection of surface and ground water quality and to implement adaptive management measures (page 148). The Applicant needs to proactively address these adaptive management measures, rather than waiting until a catastrophic event happens.
- E. The DEIS fails to analyze how the Project will impact site runoff/absorption. There is no analysis on how the filling of 43 acres of protected wetlands will change hydrologic conditions and impact runoff/absorption. Wetlands are like sponges that temporarily store floodwaters and retain harmful pollutants. Removing these wetlands will have ramifications. This needs to be assessed using best available science practices.
- F. Likewise, there is no analysis of how the filling of these wetlands will increase flooding onsite and to adjacent areas. Appropriate stormwater storage and treatment designs need to be assessed to determine potential impacts from increased flooding because of climate change.

4. WETLANDS THAT SUPPORT HYDROLOGICAL CONDITIONS AND SUSTAIN DISTINCTIVE WETLAND ECOSYSTEMS MUST BE PROTECTED, NOT REMOVED

Interdunal wetlands represent a rare and ecologically valuable habitat that warrants urgent conservation attention. With their unique formation and role in supporting rare and endangered plant species, they must be protected. In addition to outright habitat destruction, many remaining interdunal wetlands like the ones at the Project site have been severely stressed and degraded. The Project threatens interdunal wetlands and conservation efforts must go beyond preservation of acreage. Temporary and direct impacts have not been adequately provided or correctly quantified in the DEIS.

5. CUMULATIVE IMPACTS WERE NOT ADEQUATELY EVALUATED IN THE DEIS

It is implicit in SEPA that an “agency cannot close its eyes to the ultimate probable environmental consequences of its current action.” *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344 (1976). Accordingly, under SEPA, environmental review must include consideration of “direct and indirect impacts caused by a proposal.” WAC 197-11-060(4)(d). The requirement for disclosure of indirect and cumulative impacts is necessary to comply with the mandate that decisions must be based on “complete disclosure of environmental consequences.” *King County v. Washington State Boundary Review Bd. for King County*, 122 Wn.2d 648, 663, 860 P.2d 1024 (1994). “The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants.” WAC 197-11-060(4)(e). While SEPA itself does not define direct, indirect, and cumulative impacts, NEPA does, and these definitions have been borrowed for use in interpreting SEPA. *See Quinault Indian Nation v. City of Hoquiam*, 2013 WL 6637401 (Shorelines Hearings Board, Dec. 9, 2013) (borrowing NEPA definition of cumulative effects for SEPA analysis of crude-by-rail terminal).

The DEIS fails to adequately address cumulative impacts of the Project. The cumulative impacts neglects to consider the full scope of past, present and foreseeable future actions. This omission undermines the credibility of the analysis and fails to meet the standard required for informed decision-

making. The analysis must include enforceable mitigation measures and address the following impacts on treaty resources:

- A. The cumulative impacts on fish and shellfish from water quality degradation, including increased stormwater runoff and contaminant loading will only exacerbate existing levels of pollution in the soils and waters within the Project site.
- B. Additional analysis is required to substantiate how the Project, in conjunction with the Half Moon Bay Development, will not result in cumulative impacts.
- C. Growth is expected to increase in Westport and Grays Harbor County. The impacts of this projected growth in conjunction with the Project should be thoroughly assessed, along with the associated impacts to fully evaluate impacts to ecological functions.

6. THE PROPOSED ALTERNATIVES ARE INSUFFICIENT AND FAIL TO INCLUDE ALTERNATIVE SITE LOCATIONS WITH LESS ECOLOGICALLY SENSITIVE AREAS

The alternatives listed in the DEIS fail to fully consider the complete range of options, including alternative locations with less ecologically sensitive areas and privately held properties in Westport. The DEIS fails to demonstrate that no suitable alternative locations exist and lacks sufficient detail to show that the proposed development can be safely constructed with minimal environmental impacts. The Project permanently removes critical areas, particularly wetlands. This is contrary to the Washington State Parks Critical Area Policy 73-03-1, which states that “new park facilities cannot be built in critical areas unless there is a compelling reason, and the development can be adequately mitigated.” “Overriding justification” means that no suitable alternative location exists, and the development can be safely built with minimal environmental impact and risk. There is not enough mitigation to compensate for removing these wetlands. Mitigation will do nothing to compensate QIN for the loss of treaty resources within its U&A.

7. THE PROJECT FAILS TO ADDRESS QIN’S ACCESS TO AND THE EXERCISE OF ITS TREATY RIGHTS

The DEIS fails to assess impacts to QIN’s ability to access and exercise treaty rights that may occur from the restriction of access to the coastal zone and privatization of public use areas. This area is directly within QIN’s U&A to access treaty resources. Access must both be provided and maintained for this purpose. The Applicant needs to provide information on how this will be accomplished.

8. CONCLUSION

The amount of time required to adequately review the DEIS was insufficient. QIN requested a 60-day extension for the comment period when it learned of the DEIS, which was not granted by the City. Due to time constraints, QIN staff were only able to perform a cursory review of the proposed mitigation plan. With what has been reviewed, it is clear that mitigation is both lacking and fails to account for

QIN's protected treaty resources. The City's unwillingness to consult with QIN early in the process and its denial of additional time on this important review is concerning.

Also concerning is the pending lawsuit in Thurston County Superior Court on the restrictive deed in the Global Settlement Agreement. The restrictive covenants that protect rare interdunal wetlands on Westport Light State Park run with the land and should protect against harm such as anticipated with the Project.

The Quinault Indian Nation requests the City to take a hard look at the Project and its impacts stemming from the removal of critical areas, as well as impacts to QINs treaty resources. As it is written, the impacts of this Project will be substantially harmful. For that reason, QIN must oppose the Project for the reasons outlined above.

I can be reached at guy.capoeman@quinault.org. I look forward to meeting with you to discuss this critical issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Guy Capoeman", written over a horizontal line.

Guy Capoeman, President
Quinault Indian Nation

CC: Diana Dupuis, Director - Washington State Parks and Recreation Commission
Diana.Dupuis@parks.wa.gov